TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 239.

WILLIAM R. REAGAN, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 31, 1900.

(17,700.)

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INDEX.

	Original.	Print.
...tion	1	1
...ition filed	1	1
...ended petition	1	1
...verse	4	3
...dings of fact	5	3
...clusion of law	6	6
...inion	7	6
...dgment	10	11
...plication for appeal	11	11
...der allowing appeal	11	12
...rk's certificate	12	12

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 30, 1900.

In the Court of Claims.

WILLIAM R. REAGAN
vs.
THE UNITED STATES. } No. 20915.

I. Petition filed October 13, 1897.

II. Amended petition filed by leave of court October 27, 1899, which is as follows:

To the honorable the Court of Claims:

The claimant, William R. Reagan, respectfully represents:

I. That he was on the 25th day of April, 1893, appointed by the United States court for the Indian Territory United States commissioner within said Territory, under the provisions of section 39 of an act of Congress approved May 2, 1890, chapter 182, (1st Supplement to Revised Statutes, page 737), and has ever since remained such officer.

II. That he continuously performed the duties and received the salaries of said office until the 31st day of January in the year 1896, when the following order or notice was made and entered upon the records of the United States court in the Indian Territory, in the southern district, by the Honorable Constantine B. Kilgore, judge of said court:

To Hon. W. R. Reagan, United States commissioner for the fourth commissioner's district in and for the southern district of the Indian Territory.

SIR: I feel it my duty to declare the office of commissioner in that district vacant, and to notify you that you are no longer United States commissioner for that district and that your successor will be named at once.

There are many reasons which I could assign for my action in this behalf, but I will only suggest one now; that is your age and the infirmities incident thereto render you, in my judgment, in many respects unfit for the office."

III. That by section 4 of an act of Congress, approved March 1st, 1895, chapter 145, (2d Supplement to Revised Statutes, page 394), it was provided as follows in regard to United States commissioners in the Indian Territory:

"That the present commissioners shall be included in that number and shall hold office under their existing appointments, subject to removal by the judge of the district where said commissioners reside, for causes prescribed by law."

That upon the 1st day of March, 1895, the claimant was one of the present commissioners, then holding office under an existing appointment.

IV. That the aforesaid order does not constitute any statement of cause prescribed by law, sufficient under the terms of the aforesaid act of 1895, to warrant his removal.

V. That the claimant protested that said order was insufficient to effect his removal under the statute aforesaid, and duly served such protest upon the Hon. Constantine B. Kilgore, judge of said court, through the United States attorney for the southern district of the Indian Territory; that he thereupon sent two deputy marshals together with one John R. Williams, who had been by him designated as United States commissioner in the claimant's place, to take possession forcibly of the claimant's office and books as United States commissioner. That the claimant refused to turn over said office or papers or to recognize the said John R. Williams as his successor in said office, excepting so far as he was compelled thereto by the exercise of superior force on the part of the deputy marshals aforesaid, and the said Williams; that on the 10th day of February, 1896, the claimant and the said John R. Williams joined in the following instrument of writing:

"DUNCAN, INDIAN TERRITORY, }
Southern District. }

This instrument of writing witnesseth,

That, whereas, C. B. Kilgore, judge of United States court for the southern district of the Indian Territory, on the 31st day of January, A. D. 1896, made, and caused to be entered upon the docket of his court at Ardmore, Ind. Terr. an order declaring my office for United States commissioner for the Ryan division, of said district, vacant: and at the same time appointing John R. Williams to be my successor in said office, and the said Reagan having appealed to the courts of the United States from said order, on the ground that said order is contrary to the law,

Now, therefore, it is agreed by and between the parties hereto, that said Reagan will turn over and surrender the dockets, books and papers belonging to said office, under protest, and that said Williams received the same, with the understanding that said Reagan yields no rights by so doing, that he would otherwise have.

Witness our hands this 10th day of Feb'y, A. D. 1896.

JNO. R. WILLIAMS.
WM. R. REAGAN.

Witnesses:

____ ____.
____ ____."

VI. That by a provision of section 4 of the act of March 1st, 1895, the claimant was entitled to receive a salary of fifteen hundred dollars per annum, and received such salary up to the 31st day of January, 1896; that since said date, although he has continued to hold said office, he has not been paid said salary, or any part thereof, and there is justly due to this claimant for salary
3 aforesaid, from the 1st day of February, 1896, to 31st day of September, 1899, the sum of five thousand three hundred and seventy-five dollars.

No other action than as aforesaid has been had on this claim in Congress or by any of the departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and the claimant believes the facts as stated in this petition to be true. And the claimant claims the sum of five thousand three hundred and seventy-five dollars ($5,375).

WILLIAM B. KING,
Attorney for Claimant.

DISTRICT OF COLUMBIA, *ss:*

William B. King, being duly sworn, deposes and says: I am the attorney for the claimant in this case. I have read the above amended petition, and the matters therein stated are true to the best of my knowledge and belief.

WM. B. KING.

Subscribed and sworn to before me this 27th day of October, 1899.

S. A. TERRY,
[SEAL.] *Notary Public.*

4 III.—*Traverse. Filed October* 24, 1899.

Now comes the Attorney General, on behalf of the United States, and, answering the amended petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the said amended petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney General.

5 IV.—*Findings of Fact, Conclusions of Law, and Opinion. Filed January* 15, 1900.

Findings of fact.

This case having been heard by the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

The claimant was, on the 25th day of April, 1893, appointed by the United States court for the Indian Territory United States com-

missioner within said Territory, under the provisions of section 39 of an act of Congress approved May 2, 1890, chapter 182 (1st Suppl. Rev. Stat., 737), and upon the 1st day of March, 1895, the claimant was one of the present commissioners, then holding office under an existing appointment. On April 17, 1895, the following order was entered of record in the United States court in the Indian Territory, southern district:

"It appearing from the records of this court that the said William R. Reagan was a duly appointed, qualified, and acting commissioner for the United States court for the third judicial division of the Indian Territory, located at Chickasha, on the 1st day of March, 1895, it is hereby ordered that in accordance with the act of Congress approved March 1, 1895, the said William R. Reagan be, and he is hereby, continued in office, and the bond hereinbefore recited be, and the same is, in all things approved and confirmed.

"C. B. KILGORE, *Judge.*"

II.

He continuously performed the duties and received the salary of said office until the 31st day of January in the year 1896, when the following letter was entered upon the records of the United States court in the Indian Territory, in the southern district, by the Hon. Constantine B. Kilgore, judge of said court:

"IN CHAMBERS,
"ARDMORE, INDIAN TERRITORY, *January 31st*, 1896.

"Hon. William R. Reagan, United States commissioner for the fourth commissioner's district in and for the southern district of the Indian Territory.

"SIR: I feel it my duty to declare the office of commissioner in that district vacant and to notify you that you are no longer United States commissioner for that district, and your successor will be named at once.

"There are many reasons which I could assign for my action in this behalf, but I will only suggest one now, that is, your age and the infirmities incident thereto render you, in my judgment, in many respects unfit for the office.

"Very respectfully, your obedient servant,

"C. B. KILGORE,
"*Judge U. S. Dist. Court, S. Dist.*"

The letter was not sent to the claimant or served upon him. No other statement of cause was made. The claimant was given no notice of any charge against him. No hearing was allowed the claimant and no opportunity to submit proof in his defense.

III.

The claimant protested that said letter was insufficient to effect his removal, and duly served such protest upon the Hon. Constantine B. Kilgore, judge of said court.

IV.

On February 10, 1896, one John R. Williams, who had been designated by said judge as United States commissioner in the claimant's place, came to claimant's office with two armed deputy marshals, and, presenting his order of appointment, demanded possession of the dockets, books, and papers belonging to claimant's office as United States commissioner.

6 V.

The order of appointment of said Williams is as follows:

"IN CHAMBERS,
"ARDMORE, INDIAN TERRITORY, *January* 31*st*, 1896.

"John R. Williams, a resident of Ryan, southern district of the Indian Territory, is hereby appointed United States commissioner in and for the fourth district of the sourthern district of the Indian Territory.

"Said appointment to take effect at once.

"It is further ordered that said commissioner shall reside at Ryan, and that he shall hold court at Ryan and at the town of Duncan in said district until further ordered, the time to be divided so as to dispose of the business at both points, which time shall be determined upon hereafter.

"C. B. KILGORE,
"*Judge U. S. Ct., So. Dist.*"

VI.

The claimant protested and refused to recognize said Williams as his successor in said office, excepting so far as he was compelled thereto by the exercise of superior force on the part of the deputy marshals aforesaid and said Williams. Thereupon the claimant and said Williams joined in the following instrument of writing:

"DUNCAN, INDIAN TERRITORY, }
"*Southern District.* }

"This instrument of writing witnesseth:

"That whereas C. B. Kilgore, judge of the United States court for the southern district of the Indian Territory, on the 31st day of Jan'y, A. D. 1896, made, and caused to be entered upon the docket of his court at Ardmore, Ind. Ter., an order declaring my office of United States commissioner for the Ryan division of said district vacant; and at the same time appointing John R. Williams to be my successor in said office, and the said Reagan having appealed to the courts of the United States from said order, on the ground that said order is contrary to the law:

"Now, therefore, it is agreed by and between the parties hereto that said Reagan will turn over and surrender the dockets, books, and papers belonging to said office under protest, and that said Williams receives the same with the understanding that said Reagan yields no rights by so doing that he would otherwise have.

"Witness our hands this 10th day of Feb'y, A. D. 1896.
"JNO. R. WILLIAMS.
"WM. R. REAGAN."

VII.

The claimant received a salary of $1,500 per annum up to the 3d day of February, 1896, but since said date has not been paid said salary or any part thereof.

VIII.

Claimant took no other or further action to assert his claim to said office or to obtain a reversal of the action of Judge Kilgore until the institution of this proceeding.

IX.

From the 3d day of February, 1896, until the 7th day of October, 1897, John R. Williams, who was appointed by Judge Kilgore to said office in claimant's stead, exercised said office and was paid the salary thereof. On said date one Horace M. Wolverton was appointed as the successor of said John R. Williams by Hon Hosea Townsend, United States judge for said district, and since that time has exercised said office and has been paid the salary thereof.

X.

From the 3d day of February, 1896, until the commencement of this action, the disbursing clerk of the department of justice paid to the persons who succeeded claimant to said office the salary of said office in the absence of any notice on the part of claimant that he claimed to be lawfully entitled to said office and the salary thereof, or any claim or demand on the part of claimant for the payment to him of such salary for said period of time or any part thereof.

Conclusion of Law.

Upon the foregoing findings of fact, the court decide, as a conclusion of law, that the petition be dismissed.

7 HOWRY, *J.*, delivered the opinion of the court:

This action is for the recovery of a certain amount of salary alleged by plaintiff to be due to him as United States commissioner for the Indian Territory, by virtue of an original appointment to that office under section 39 of the act of May 2, 1890 (1 Supp. R. S., 737), and his reappointment to the same office under a subsequent act approved March 1, 1895 (2 Supp. R. S., 394), but from which office plaintiff was removed by an order of the judge of the court for the division in which he was serving as commissioner without any cause prescribed by law. The amount sued for is $5,375, being at the rate of $1,500 for each year, beginning at the time plaintiff surrendered the office under protest to the person named as his successor.

On January 31, 1896, the following order or notice was made and entered upon the records of the United States court for the Indian Territory, in the southern district thereof, by the Hon. Constantine B. Kilgore, judge of said court:

"To Hon. W. R. Reagan, United States commissioner for the fourth commissioner's district in and for the southern district of the Indian Territory.

"SIR: I feel it my duty to declare the office of commissioner in that district vacant, and to notify you that you are no longer United States commissioner for that district, and your successor will be named at once.

"There are many reasons which I could assign for my action in this behalf, but I will only suggest one now; that is, your age and the infirmities incident thereto render you, in my judgment, in many respects unfit for the office.

"Very respectfully, your obedient servant,

"C. B. KILGORE."

When knowledge of this order was brought to plaintiff's attention he protested that it was insufficient to effect his removal under the law, and he accordingly made protest to the judge through the United States attorney for the district of his action. Thereupon John R. Williams, who had been designated as commissioner in plaintiff's place, came to take possession forcibly of the office and books of which plaintiff was possessed as commissioner, being accompanied by two deputy marshals for the purpose of enforcing the order of the judge. Plaintiff refused to turn over said office or papers, or to recognize his successor in said office, but finally yielded to the exercise of superior force, joining with his successor in an agreement duly reduced to writing, by which the books and papers of the office were surrendered to the person designated by the judge as successor, the removed official yielding with the understanding that no rights were waived by him.

Since the time named in the petition plaintiff alleges that he has not been paid any part of the salary justly due to him, nor has he attempted to perform any of the duties of the office, but he maintains that he has legally continued to hold said office and is entitled to its emoluments.

Section 4, of the act of March 1, 1895, which increased the number of commissioners, is in the following language:

"That the present commissioners shall be included in that number and shall hold office under their existing appointments, subject to removal by the judge of the district where said commissioners reside, for causes prescribed by law."

The contentions here arise from the use of the words "for causes prescribed by law" in the foregoing act, the claimant contending (1) that these words require notice and a hearing before the order of removal could become effective; and (2) that the letter of removal having stated no cause prescribed by law, plaintiff's title to the office was not affected by the order.

The case is one of first impression under a very peculiar statute and presents some novel features. Precedents directly in point are entirely wanting and the issues must be determined without those guides which relate to other officers where the right to hold against an order of removal is the question.

If plaintiff's contentions are correct, then his indefinite tenure of office has been nominal and attended with no responsibilities or duties; and while the defendants should not be heard to say that by the unlawful act of one of their officers plaintiff has not performed these duties or continued to have these responsibilities, it is to be noted that if the plaintiff has not been legally removed from office, the statute under which he claims gave him a tenure not accorded to his official superiors in the persons of the judges of the courts for the Indian Territory and virtually made him a commissioner for life. Practically he would hold except for such misbehavior as would be cause for the impeachment and removal of the judges of some of the courts of the United States. In this respect the statute under which he claims is most extraordinary if it be what is claimed for it.

8 Reversing the order of presentation of plaintiff's contentions, it is first to be stated that there are no causes defined by any statute of the United States for the removal of commissioners in the Indian Territory. The researches of counsel have not been able to exhibit to us any statute designating causes for such removals, nor have our own investigations enabled us to find any rule on the subject. The act of 1895 contains nothing more specific than the general words quoted, and nothing more definite has since that time been enacted.

It is contended that if a cause is found against a commissioner in the Indian Territory which would, within the laws of Arkansas, have been cause for the removal of a justice of the peace the commissioner may then be removed; otherwise, protected by this provision of the statute, he is not subject to removal by the courts of the United States.

By section 31 of the act of 1890, *supra*, the laws of the State of Arkansas, appearing in Mansfield's Digest, are put in force in the Indian Territory according to the chapters relating to different subjects specified in this section.

By section 39 commissioners were authorized to be appointed, and when appointed to have within the district to be designated in the order of court appointing them all the powers of commissioners of the circuit courts of the United States. The provisions of chapter 91 of said laws of Arkansas regulating the jurisdiction and procedure before justices of the peace in Arkansas were extended over the Indian Territory.

By section 4 of the act of 1895 (28 Stat. L., 696) the provisions of chapter 45 of Manfield's Digest of the general laws of Arkansas, entitled "Criminal Law" (except as to the crimes and misdemeanors mentioned in the proviso of this section), and chapter 46 of said laws of Arkansas contained in said digest, entitled "Criminal Procedure," and chapter 91 of said general laws, regulating the juris-

diction and procedure before justices of the peace in civil cases, were extended to and put in force in the Indian Territory.

The effect of this provision, according to plaintiff's contention, is to make the commissioners the equivalent of justices of the peace in Arkansas; that is to say (to state the matter in another form), that as no Federal statute prescribed specific causes for removal of commissioners, in order to find what causes are prescribed by law for their removal resort must be had to those causes defined by the laws of Arkansas for the removal of justices of the peace.

An examination of the criminal law and procedure of Arkansas extended to and put in force in the Indian Territory shows that Congress did not specifically apply to the removal of commissioners in the Territory the sole causes for which justices of the peace might be removed in Arkansas. The effect of the construction for which plaintiff contends would be to hold the commissioners in office for life unless some of the causes defined by the laws of Arkansas become operative upon them. Incapacity, old age, removal from one district into another, and reasons which might otherwise be regarded as good causes for removal, could not affect the commissioners under the laws of Arkansas, as those laws do not include the things just mentioned among the causes for removal. The reasons are clear. Justices of the peace are elected in Arkansas for terms of short duration. Their tenure of office being for two years only, Congress could not have intended to apply the rules applicable to the removal of elected officials in Arkansas within their short period of service to commissioners in the Indian Territory who held by appointments for uncertain and indefinite periods of time. The contrary view would be in restriction of the causes for removal to a degree not contemplated by Congress in any event.

What, then, is the meaning of the act of 1895 when it apparently attempted to differentiate the manner of removal of commissioners in the Indian Territory from the way commissioners in the circuit courts of the United States are usually removed?

On the surface it would seem very unreasonable to say that nothing was meant by this statute. Generally speaking, it is not for the courts to hold a statute meaningless if a reasonable construction can give meaning or force to its provisions. In the consideration of the particular statute in question it should, like all other statutes presumably enacted for a purpose, be given such meaning as its language fairly implies and to the full extent of the accomplishment of its supposed objects. But having no clear meaning for want of specific statutory prescription for causes of removal, the displacement of these commissioners (it is again contended) must either be referred by the act of 1895 to such causes as would be recognized in courts as a just ground for removal, or if no present effect be given to the words, removal must await legislative definition of the causes.

9 It would be an unsafe guide to follow if we should adopt the suggestion that the words of the act under construction refer to such causes as the courts, in the attempt to prescribe statutory causes, might recognize as just grounds for removal. What

would seem to be just grounds for removal by one court would perhaps seem to be unjust grounds by another tribunal, and the results such as to lead to uncertainty and confusion. No uniform rule could exist until the court of highest authority could lay down some certain cause or causes under the statute by which the inferior courts could be imperatively governed. But aside from this, the power "to prescribe by law" is a legislative function and cannot be conferred on judicial officers. (Exline *v.* Smith, 5 Cal., 112; Burgoyne *v.* Supervisors, 5 *Ib.*, 9.)

It seems most unreasonable, however, to say that Congress passed this law with the intention of making these territorial commissioners irremovable. Commissioners in other parts of the country are subject to removal and we cannot adopt the view that by this legislation it was the policy to keep those in the Indian Territory in office until the legislative function of naming the specific causes should at some future time follow the general statute. It cannot be ascribed to Congress the intention of defining causes by future legislation, thereby holding up the matter in continued derogation of ordinary judicial right. The words used do not say that commissioners shall be removed for causes *to be* prescribed, but for causes prescribed—that is, in the ordinary import of words, that the causes were already established by law. As the causes were not in fact already prescribed, we must view the act of 1895 as incomplete and importing nothing more than causes such as would, according to the practice of the courts (not purely arbitrary), operate to secure the removal of those officers elsewhere.

The question of the right of plaintiff to notice and a hearing is not involved unless the statute affords him that protection and right. As the statute does not do this, plaintiff must be regarded as subject to removal in the same manner as others of his class. All commissioners are quasi-judicial officers, who perform their duties under the direction of the courts, and in effecting their removal the courts are not bound to accord to them any higher or greater consideration than is accorded to auditors, referees, and receivers who may be removed without the formalities of a hearing and a trial. Their removal is not subversive of any fundamental principle of official tenure and responsibility as in those English cases where the right to hold the office was either by prescription or other fixed tenure, or those cases in this country where the official was in commission by virtue of an election by the people or for a fixed term by virtue of executive appointment and confirmation at the hands of an advisory body.

Where the statute gives a power of removal "for cause," without any specification of the causes, this power is of a discretionary and judicial nature, and unless the statute otherwise especially provides, the exercise thereof cannot be reviewed by any other tribunal, with respect either to the cause or to its sufficiency or extent, or otherwise. Even in some cases where the statute specifies the cause of removal it has been ruled that the removing authority is the sole and exclusive judge of the cause and the sufficiency thereof, and that the courts cannot review the decision in any case where juris-

diction existed. People *ex rel. v.* Stout, 11 Abb. Pr. (N. Y.), 17; S. C., 19 How. Pr. (N. Y.), 171; People *v.* Bearfield, 35 Barb., 254; Patton *v.* Vaughan, 39 Ark., 211; People *v.* Hill, 7 Cal., 97; City of Hoboken *v.* Gear, 25 N. J. L., 265; Smith *v.* Brown, 59 Cal., 672; People *ex rel. v.* Higgins, 15 Ill., 110.

This is not a case where the power of a judicial tribunal is invoked to ascertain and enforce the legal rights of an individual against the act or authority of other individuals or of the legislative or executive departments, but involves the function of deciding upon the validity of the removal by order of another judicial tribunal. If there was discretionary power in the judge, or if his act was made conclusive as to the right involved, as we think it was, it is not within the province of this court to inquire into the propriety or impropriety of the act.

These views render unnecessary any consideration of the question raised in the argument that payment of the salary of an office by a public body to a *de facto* officer is a defense to an action by a *de jure* officer for such salary; and that title to an office can be determined only in a direct proceeding instituted for that purpose and cannot be determined in an action to recover the salary thereof on any other collateral proceeding.

The petition is dismissed.

10 V.—*Judgment of the Court.*

WILLIAM R. REAGAN
vs.
THE UNITED STATES. } No. 20915.

At a Court of Claims held in the city of Washington on the 15th day of January, 1900, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the petition be dismissed.

BY THE COURT.

11 VI.—*Application for Appeal. Filed March* 22, 1900.

In the Court of Claims, Term 1899–1900.

WILLIAM R. REAGAN
vs.
THE UNITED STATES. } No. 20915.

Now comes the claimant and appeals from the judgment of this court dismissing his petition, rendered on the 15th day of January, 1900, and prays for an allowance of his appeal.

WILLIAM B. KING,
Attorney for Claimant.

VII.—*Allowance of Appeal.*

At a Court of Claims held in the city of Washington on the 22nd day of March, 1900, it was ordered that the foregoing application for appeal be allowed as prayed for.

BY THE COURT.

12 In the Court of Claims.

WILLIAM R. REAGAN
vs.
THE UNITED STATES. } No. 20915.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, the findings of fact by the court, the conclusions of law thereon, and the opinion of the court, of the judgment of the court, of the application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 30th day of March, 1900.

[Seal Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

Endorsed on cover: File No., 17,700. Court of Claims. Term No., 239. William R. Reagan, appellant, *vs.* The United States. Filed March 31st, 1900.